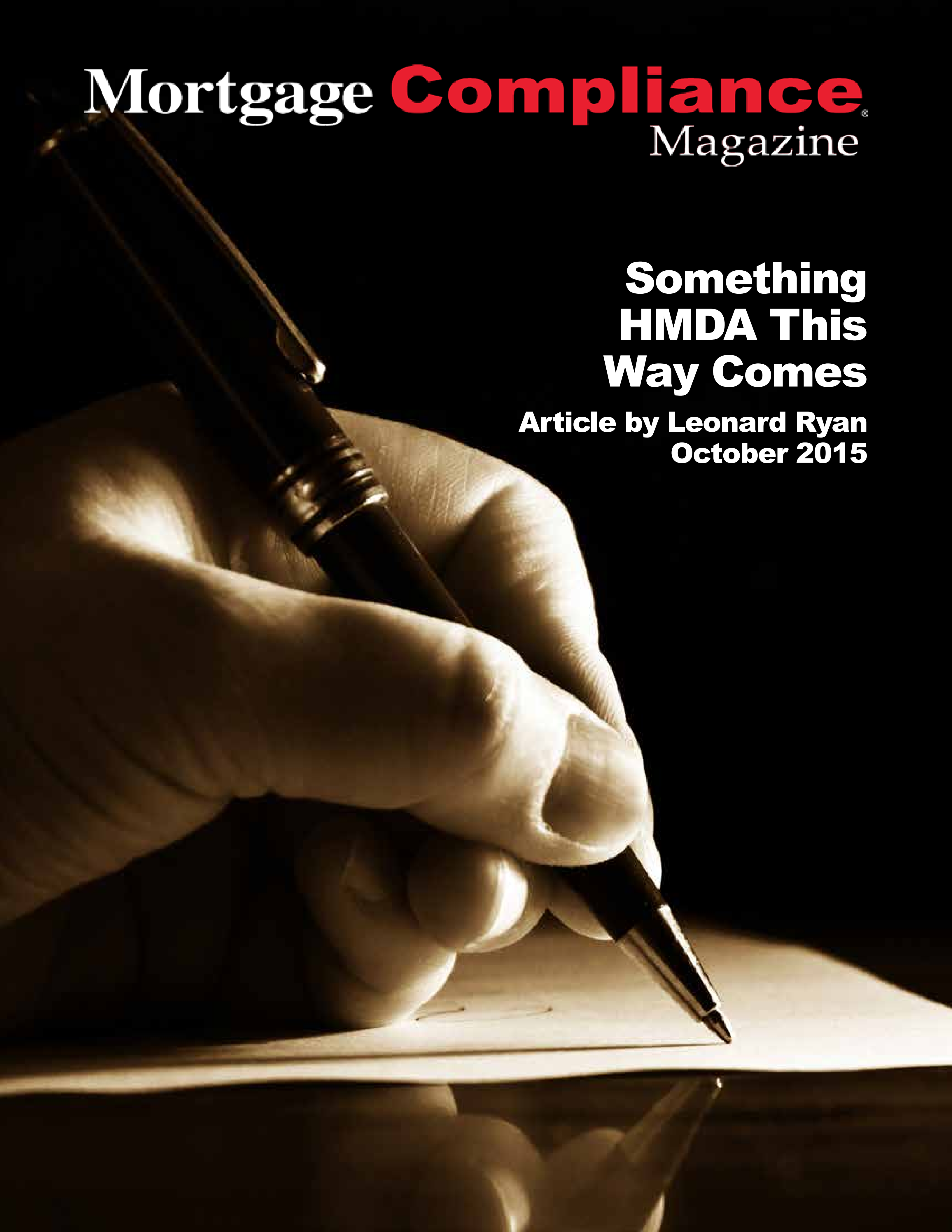
Mortgage Compliance Magazine



Something HMDA This Way Comes

Article by Leonard Ryan

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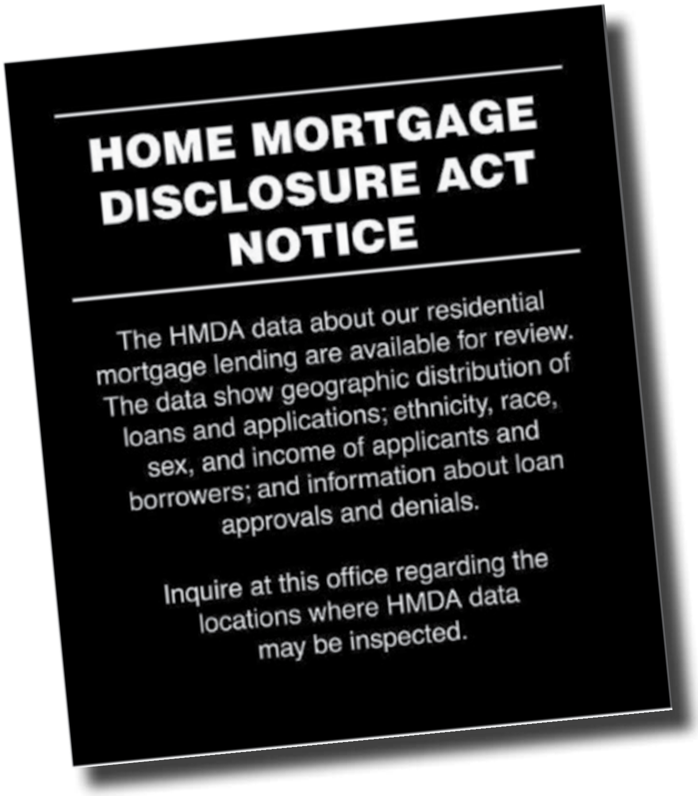
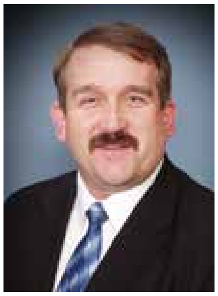


SOMETHING HMDA THIS WAY COMES

BY LEONARD RYAN


Leonard Ryan

So, with TRID, we are finally done with regulatory changes and can concentrate on lending. Unfortunately, we have one more … HMDA.

The mortgage industry has endured dramatic and substantial change during the past 10 years. Some from self-inflicted wounds, but most change has been the collateral damage through regulation forced upon the industry players that properly conducted their business. The Consumer Financial Protection Bureau (CFPB) has done an excellent job of wearing down the strongest of compliance professionals.

So, with TILA-RESPA Integrated Disclosures (TRID), we are finally done with regulatory changes and can concentrate on lending. Unfortunately, we have one more… Home Mortgage Disclosure Act (HMDA).

HMDA IS DIFFERENT FROM RECENT CFPB

From a technical viewpoint, the CFPB HMDA changes will be easier to implement than many lenders fear. The good news for most lenders is that your loan origination software (LOS) will have the majority of fields already available in some form thanks to TRID, QM, and other recent regulations. Additionally, in contrast to recent regulations, for all but the largest of originators, you will have a full year after the start date to make sure numbers are properly reported. Finally, the earliest the new CFPB HMDA requirements can go into place is January, 2017.

The bad news is that when CFPB HMDA becomes the law of the land, you will have more data scrubbing. The operational changes for your lending institution will be significant as you will need more stringent business rules, quality control, and data integrity controls to ensure that you do not submit inaccurate records to a regulator that will judge your mortgage lending operations instantly.

Due to the quantity and nature of the data you are submitting, all lenders will attract more scrutiny, and instant institutional death through the numbers you are providing is a real possibility as will be further explained later in this article. No need for a hearing, no need for a review. Those will become simple formalities as this terrible new horror story unfolds.

WHY REGULATORS FEEL THESE CHANGES ARE NEEDED

After the housing bubble burst in 2008, state and national lawmakers brought a number of regulatory agencies in for congressional hearings. The purpose was to seek political cover and chastise the regulators for their inability to detect bad players and stop the housing crisis. The answers from testifying bureaucrats were consistent. The lack of data did not illuminate the problem. They needed more data to avoid a repeat in the future.

This concern over the lack of data led to a series of HMDA hearings in four cities ending in Washington, D.C. with regulators. The three factions present at every hearing clearly had very different goals. The lenders were publically being blamed for everything, and so, as a matter of good public and regulator relations, were open to providing more data to help regulators weed out the industry's bad players. The regulators wanted protection for the borrowers and to never be blamed for a lack of proper monitoring again. The community groups and number crunchers wanted every piece of information possible for their "unbiased" analysis as a protector of their constituencies. From these hearings came the basis for many of the requirements for HMDA in the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

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DATA REQUIRED BY CFPB HMDA

As currently proposed, HMDA data elements will double and add 40 new fields in the CFPB HMDA. These new data elements include almost all primary fields that are key to most credit decisions including:

- Appraised Value;
- Credit Scores of the two primary borrowers (and possibly all co-borrowers);
- Credit Score Provider relied upon for the credit decision;
- Total Points and Fees;
- Loan To Value and CLTV;
- Debt to Income Ratios Used for the Credit Decision;
- APR (not just rate spread);
- Loan Channel (Retail, Wholesale, Correspondent);
- Amortization Information (adjustment, interest only, interest rate, negative amortization, balloon; payments);
- Automated Underwriting System Decision;
- QM Qualified; and,
- HELOC /Reverse Mortgage Information (to be mandatory rather than optional reporting).

In addition, there are fields to identify the characteristics of the borrower, your institution, and your employees for fair lending evaluation purposes and to directly identify the property including:

- Borrower/Co Borrower Age;
- Property Address, City, State, Zip and possibly Parcel Number;
- NMLS ID for Branch and Loan Originator; and
- A Universal Loan Identification Number to Track the Loan through all secondary market transactions.

It is being proposed that all lenders originating 25 loans or more per year have a filing requirement. It is hoped that the HMDA application definition will match the TRID definition to make it easier for the industry to comply but there is no indication yet of the direction the CFPB may take with this issue.

THE HORROR STORY - CFPB HMDA = INSTANT FAIR LENDING

Examining the list of added data, you probably start to realize that the CFPB and Dodd-Frank portion of the requirements are going to provide enough fields to track your profits and performance on all loans. Bad loans, in the CFPB's mind, will be isolated down to the loan originator and branch level. Fair lending issues will be analyzed and compared to both your operations and the operations of all other submitters within hours of your submission of HMDA data.

HMDA is a difficult task for many institutions under the current rules. What does one say of a regulation that is often associated with the pits of hell? However, ▷

there are limitations to the data when it comes to fair lending. If your regulator wants to conduct a fair lending examination, today the examiner looks for your procedures and requests sampling data to determine if specific loan programs or practices in your operations create direct discrimination or a disparate impact fair lending violation. It is more difficult for a community group bent on seeking its next source of funding for employees to seek the data.

If such a finding is made by your regulator, there could be a fine levied or a referral to another agency such as the U.S. Department of Justice. All of this process takes months to evolve and there are many opportunities to challenge the findings. It is also kept confidential until the moment it becomes serious enough to demand civil money penalties and public recognition. However, with the new amount of data collected, regulatory agencies will have the information they need to make a determination on your guilt or innocence without and additional request. The new CFPB HMDA will be 'Instant Fair Lending.'

WHO NEEDS A HEARING?

CFPB personnel have all discussed HMDA positively in terms associated with Dodd-Frank mandated data collection requirements along with the data developed under the new rules implemented by the agency over the past four years. They want easier tools for lenders to comply and want to get the rule right so they don't need to make significant changes once the rule is implemented.

With so many financial institutions afraid of lending outside of safe harbors, it isn't too much of a stretch to imagine that, with this massive quantity of data, the various agencies evaluating the data could become tempted to use it to create an entire automated corrective action and civil money penalty system for outlier lenders. Certainly, the data will be used to better determine exam schedules, risks, and priorities. All of this can be done without your advanced knowledge and even before the data is released to the public. Your institution could become a newspaper and regulator success story concurrent with the public release of the data. You would have no time or opportunity to respond.

BIG DATA – THE DANGER TO LENDERS, BORROWERS, AND THE AMERICAN DREAM OF HOMEOWNERSHIP

I don't believe the intent of the new HMDA rules as envisioned by legislators was to create a giant database on every borrower in America; however, this will be the result. The agency will have a massive database with years of very sensitive borrower information that, like Facebook, will never be deleted.

With this data one can ask a number of relevant questions and establish automated gotcha scenarios. For example:

1. If one lender funds the borrower application that another institution denied (since the CFPB will have the address and maybe the parcel information to cross-reference borrower and lenders), is there a fair lending concern instantly generated with the institution that did not fund individual loans?
2. Are there loan officers that fund whites over minorities with similar or better credit scores at a higher rate? Are we going to ban that loan officer for life and remove them from the NMLS based on regulator-provided HMDA information?
3. If the minority is funded by a competitor and you didn't know your denied borrower received a loan from a peer-ranked competitor, does that automatically label you a bad player?
4. Identifiable data that can be directly cross-referenced to specific borrowers will be submitted on every loan. Might this new government-stored database ever be compared to IRS records or other agencies to determine either mortgage fraud or initiate IRS audits?
5. Finally, what happens to trust in the industry if years of HMDA data becomes hacked and is now posted where anyone can find out about a neighbor's finances?

THE PUBLIC LAR DATA – SAFE IN YEAR ONE BUT…

There is great concern throughout the industry about data elements that may eventually be made public with the annual release of the data. The position of the CFPB has been that the first year of data availability (assumed to be August or September 2016 for quarterly submitters and September 2017 for annual submitters) will not change from today's data elements. But the commitment ends there.

The CFPB is under tremendous pressure from universities and community groups to make all of the data available to these interested parties. These groups have stated in the pre-Dodd-Frank HMDA hearings that their needs to analyze public housing policy or detect the bad industry players outweigh concerns over the privacy of borrower data. Whether the CFPB, whose mission is to protect the consumer, ultimately offers more transparency by releasing more data elements is unknown. However, Dodd-Frank gives the CFPB total discretion in determining the elements that will be made public. Lenders will need to make it clear to the CFPB, should they contemplate making more data public, that it will come at the sacrifice of borrower privacy and will also have the effect of limiting the loan choices that lenders may offer so that they do not become singled out simply by their HMDA data.

In business planning it is always prudent to hope for the best but prepare for the worst. Let's all hope that the CFPB values borrower privacy over interest group pressure and takes its role in collecting this volume of new data in a helpful and non-threatening manner to encourage more lending. However, lenders would be wise to plan to spend more time on both data integrity and analysis once these HMDA rules take effect. The cost of not watching your data will be very severe. Your diligence in ensuring your executive team and workers take HMDA seriously will have a big impact on your ability to maintain profitable operations.

Leonard Ryan is president and founder of QuestSoft Corporation. The company, founded in 1995, provides HMDA, CRA, Fair Lending and automated compliance solutions to over 2,000 lenders across the United States. Mr. Ryan has been recognized as a Mortgage Banking Tech All-Star. Leonard can be reached at leonard.ryan@questsoft.com